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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/777,614	02/05/2001	Christopher P. Bergh	10235-048001	6722
26161	7590	09/28/2011	EXAMINER	
FISH & RICHARDSON P.C. (BO) P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022				ALVAREZ, RAQUEL
ART UNIT		PAPER NUMBER		
3682				
			NOTIFICATION DATE	DELIVERY MODE
			09/28/2011	ELECTRONIC

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/777,614

Filing Date: February 05, 2001

Appellant(s): BERGH ET AL.

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Denis G. Maloney  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 8/9/2011 appealing from the Office action  
mailed 8/4/2011.

**(1) Real Party in Interest**

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

**(2) Related Appeals and Interferences**

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

11/549,797

**(3) Status of Claims**

The following is a list of claims that are rejected and pending in the application:

Claims 17-29, 31-38, 44-46 and 48-50

**(4) Status of Amendments After Final**

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

**(5) Summary of Claimed Subject Matter**

The examiner has no comment on the summary of claimed subject matter contained in the brief.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the

subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

#### **(7) Claims Appendix**

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

#### **(8) Evidence Relied Upon**

2002/0035568	BENTHIN et al.	3-2002
6,694,316	LANGSETH	2-2004

#### **(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

#### **Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 17-29, 31-38 and 44-46, 48-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benthin al. (2002/0035568 hereinafter Benthin) in view of Langseth et al. (6,694,316 hereinafter Langseth).

With respect to claims 17, 19-20, 25-27, 31, 33, 35-36, 44 Benthin teaches a computer-controlled method for managing and distributing offers (abstract).

Producing a plurality of marketing campaign each comprising a plurality of offers selected from a set of offers to send to multiple targeted individuals with the offers to selected by one or more computers for each of the plurality of marketing campaigns specified by offer data processing rules, executed by the one or more computer, from which one or more of the offers are identified for targeting specific individuals and delivering the offers based on execution of offer data processing rules (i.e. controlling the presentation of when and what type of offers to transmit to the customers, paragraphs 0031 and 0041 teaches automatic offers that are presented right away; paragraph 0030 teaches presenting the offers if it fit the customer profile and paragraph 0024 teaches the customer clicking on ads to determine which campaign of offers to present to the customer)(see also Figure 1);

With respect to the newly amended feature of delivering the offers over channels to specific, targeted individuals of the multiple targeted individuals and the allocation of the offers to the channels based on the determined allocation in each of the marketing campaign with the channels being one of a plurality of different types of delivery channels. Langseth teaches selecting the advertisements or offers based on the capability of the channels to the selected offers. Langseth teaches selecting from a plurality of channels which advertisements to place based on the channel capacity and content of the channel. Langseth, clearly teaches in step 928, the advertisements being selected based on the channel being run or the capacity of the channel. Each channel accommodates or is capable of outputting different types of ads. For example, a golf site may only enable access to a sports channel. It would have been obvious to a

person of ordinary skill in the art at the time of Applicant's invention to have included in the system of Benthin the teachings of Langseth of delivering the offers over channels to specific, targeted individuals of the multiple targeted individuals and the allocation of the offers to the channels based on the determined allocation in each of the marketing campaign with the channels being one of a plurality of different types of delivery channels because such a modification would "**provide a readable available medium for delivery of the right information at the right time**" (Langseth col. 3, lines 6-10).

Claims 18, further recite determining a channel to select based on user response to an offer and delivering targeted information to the individual based on the information. Official Notice is taken that it is old and well known in marketing to determine how well users response to ads on TV versus ads in the radio in order to select how the ads are going to be delivered based on the user's responses. It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to have included determining a channel to select based on user response to an offer in order to allow the advertisers to determine the best delivery medium.

Claims 23-34 and 34 as amended further recite timing and targeting the specific information to the individual according to the accepted information. Official Notice is taking that it old and well known to keeping track of coupons, of when and which offers are redeemed by the individual users in order to target subsequent coupon sets to the individuals. It would have been obvious to a person of ordinary skill in the art at the time

of Applicant's invention to have included timing and targeting the specific information to the individual according to the accepted information in order to obtain the above mentioned advantage.

Claims 21-22, 37-38 further recite the capacity of the channels being related to the monetary cost of the channel. Official notice is taken that it is old and well known for monetary and operating cost being related to the capacity of the channels. For example, CNN will have a higher capacity than a local smaller channel with a smaller budget. It would have been obvious to have included the capacity of the channels being related to the monetary cost of the channel because such a modification would allow the channels to invest and better maintain the channels in order to have a higher chances of being selected.

With response to claims 28-29, 32 and 45-46, Benthin further teaches reporting the effectiveness of the plurality of offers and presenting a sequence of related offers to those individuals based on the individuals activities (i.e. tracking offers effectiveness in order to further target further offers to the individuals)(paragraphs 0082-0088).

With respect to the delivering through the channels subsequent offers based on the tracked activities. Langseth teaches delivering through a plurality of channels. It would have been obvious to include the teachings of Langseth which teaches delivering through a plurality of channels into the teachings of Benthin which teaches tracking

effectiveness of the offers in order to determine which medium/channel is most favorable to the individual.

With respect to claims 48-50, Benthin further teaches wherein at least one of the offer data processing rules being a set of time based rules, the time based rules including at least one of a direct rule that immediately instantiates offers based on an offer campaign, a triggered rule that instantiates offers based on the occurrence of particular conditions, and a staged rule that instantiates offers based on user interaction with previous offers; and wherein selecting further comprises: selecting one of the offers based on execution of one of the time based rules (Benthin clearly teaches different times to present the offers such as certain offers are presented right away, equivalent to Applicant's direct rule (i.e. specify the content to be automatically present the customer on paragraph 0031 ), other offers are presented based on the timing of certain conditions, such as the user clicking on certain ads, equivalent to Applicant's triggered rule (i.e. clicking on a link on paragraph 0024) and in addition certain offers presented in stages such as building a customer profile and then presenting different offers to the customers, equivalent to Appellant's staged rule (i.e. offers based on customer's profile, paragraph 0024)).

#### **(10) Response to Argument**

**Appellant Argument 1:** Appellant argues that Langseth does not possess different channels or the "delivery channel types" as that term is used by Applicant. It is

clear therefore, that Benthin neither describes nor renders obvious whether taken separately or in combination with Langseth "delivering the offers over channels to specific, targeted individuals ... the channels and time of delivery ... based on execution of offer data processing rules and the allocation of the offers to the channels based on the determined allocations in each of the marketing campaigns with the channels being ... different types of delivery channels."

**Examiner response to argument 1:** The Examiner disagrees with Appellant because Langseth teaches selecting from a plurality of channels which advertisements to place based on the channel capacity and content of the channel. Langseth, clearly teaches in step 928, the advertisements being selected based on the channel being run or the capacity of the channel. Each channel accommodates or is capable of outputting different types of ads. Benthin teaches a plurality of marketing campaign. The delivery of the offers being based on individual characteristics and event based rules. Since "time based rules" is broader than "clock based rules". Time based could be related to event based rules and is taught by Benthin. Therefore the combination of Langseth and Benthin teach delivering the offers to specific, targeted individuals ... and time of delivery ... based on execution of offer data processing rules and the allocation of the offers (Benthin) to the channels based on the determined allocations in each of the marketing campaigns with the channels being ... different types of delivery channels" (Langseth).

**Appellant argument # 2:** With respect to claims 18, 23-24 and 34, Appellant argues that the Official Notice doesn't address: "determine a channel to select based at

least in part on the specific, targeted individual's response to an offer". In addition Appellant states that the Official Notice taken by the Examiner pertains to how well users response to ads on TV versus ads in the radio in order to select how the ads are going to be delivered based on the user's responses. Applicant's claims are directed to individualized offers that are sent to individuals, and claim 34 requires that the individual's response to such offers determines the delivery medium.

**Response argument # 2:** Benthin teaches specific targeted offers are delivered to the individuals. The Official Notice taken pertains to sending the ads to the users and measuring how the user's respond to ads in order to determine if the channel in which the ad was delivered was effective. Therefore the combination of Benthin delivering targeted offers and the Official notice which pertains to measuring what delivery method the users prefer teach determining a channel to select (TV versus radio) and delivering the targeted offers (Benthin) based on the individual's response (official notice).

**Appellant argument # 3:** With respect to claims 19-35, Appellant is unaware of any teachings in either of the references or any purported official notice that would suggest using a privacy characteristic defined by the individual to prohibit or limit the frequency of various types of offers.

**Response to argument #3:** The Examiner disagrees with Appellant because Benthin on paragraph 0024 teaches using privacy characteristics such as the user's profile to limit the offers types based on the user's profile.

**Appellant argument #4:** Appellant argues with respect to claims 20 and 36 that the claims are directing to: "allocate the selected prioritized offers according to a capacity associated with each of the channels." Langseth has a different concept of "channel" that does not suggest what is claimed in Appellant's claims, Langseth does not teach instructions to "allocate the selected prioritized offers according to a capacity associated with each of the channels" by the examiner's assertion that "advertisements to place" corresponds the claimed allocation of the offers to channels from plural marketing campaigns.

**Response to argument # 4:** The Examiner wants to point out that the offers are prioritized according to the capacity of the channels. For example, in step 928, the advertisements being selected based on the channel being run or the capacity of the channel. Each channel accommodates or is capable of outputting different types of ads. For example, a golf site may only enable access to a sports channel. Therefore contrary to Appellant's arguments, Langseth teaches allocating the selected prioritized offers according to a capacity associated with each of the channels.

**Response to argument # 5:** with respect to claims 21-22 and 37-38, Appellant argues that the Official Notice taken on the claims do not address taking into account or consideration monetary and capacity costs of the channel in which the offers are delivered.

**Response to argument # 5:** The Examiner disagrees with Appellant because as stated in the Official notice, it is well old and well known to take into account the cost

associated with the channel being used. Langseth teaches allocating the selected prioritized offers according to a capacity associated with each of the channels and the For example, certain channels such as CNN will have a higher operating cost than a smaller channel and this is taken into account before a selection is made. Therefore, the combination of Langseth and Official notice teaches consideration monetary and capacity costs of the channel in which the offers are delivered.

**Appellant argument # 6:** with respect to claims 28-29, Appellant argues that the references do not teach "tracking activities of the targeted individuals to whom the offers were targeted according to the channels over which the offers were sent and determining by the one or more computers an effectiveness of the plurality of offers by matching information received from sources of activity related information to the offers" and "delivering through channels selected from the plurality of channel a sequence of subsequent offers to individuals based on their tracked activities."

**Response to argument # 6:** The Examiner disagrees with Appellant because Benthin teaches tracking the activities of the targeted individuals and Langesth teaches delivering offers via a plurality of channels. Therefore it would have been obvious to include the teachings of Langseth which teaches delivering through a plurality of channels into the teachings of Benthin which teaches tracking effectiveness of the offers in order to determine which medium/channel is most favorable to the individual.

**Response to argument # 7:** Appellant argues that the references do not teach time based rules, as an offer data processing rule.

**Response to argument# 7:** The Examiner first of all wants to point out that "time based rules" is broader than "clock based rules". Time based could be related to event based rules. Benthin clearly teaches different times to present the offers such as certain offers are presented right away, equivalent to Applicant's direct rule (i.e. specify the content to be automatically present the customer on paragraph 0031 ), other offers are presented based on the timing of certain conditions, such as the user clicking on certain ads, equivalent to Applicant's triggered rule (i.e. clicking on a link on paragraph 0024) and in addition certain offers presented in stages such as building a customer profile and then presenting different offers to the customers, equivalent to Appellant's staged rule (i.e. offers based on customer's profile, paragraph 0024). Therefore contrary to Appellant's arguments Benthin teaches time based rule that instates offers, for example either in the form of a direct rule, a triggered rule or a staged rule.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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